


OGC Has Reviewed

13 JUL 1977

MEMORANDUM FOR: The Record

FROM

:


Coordinator, EAA

STATINTL

SUBJECT

: Kennedy Center Sales Agreement

The Employee Activity Association has a verbal agreement authorizing us to operate as a Kennedy Center Voucher Outlet until completion and return of the signed contract form.

We have been operating under an interim agreement which has been extended several times.

This date, after five months of operation, Wayne Richardson, representing the Kennedy Center, agreed to let us operate until the original contract is signed.

We will continue to submit statements of sales and payments for sales as formerly agreed upon.

STATINTL



OGC 77-4302

6 July 1977

MEMORANDUM FOR: DC/BSD/OP

STATINTL

FROM:


Assistant General Counsel

SUBJECT: EAA Ticket Sale Agreement With JFK Center
For the Performing Arts (Attached)

1. This is in response to your informal request for our comments on the proposed ticket sale agreement with the John F. Kennedy Center for the Performing Arts. In general, I have no serious reservations about the agreement, though I believe it to be heavily weighed in favor of the Center. It appears to be very similar to the standard type of contract utilized by the entertainment industry.

2. The specific concerns noted below are based on the supposition that EAA may have some bargaining latitude. More than likely it is a "take it or leave it" proposition.

Par 4 - a, b, c, - Conceivably, this paragraph could require the EAA to indemnify the Center for damages caused by the use of JFK prepared advertising if such advertising is used by EAA to promote the event.

Par 8 - Since paragraph 10e indicates that the contract does not establish an Agency or partnership agreement, why should the JFK Center be an insured party under coverage required by this section? Further, what is the extent of coverage required? Does it only extend to the EAA or can an individual injured at the Center reach the EAA policy?

3. If any changes are made in the agreement, please note that paragraph 15 requires that they be in writing and signed by both parties.


STATINTL

JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

Sales Promotion Department

31 January 1977

NOTES FOR PROSPECTIVE KENNEDY CENTER OUTLETS

Enclosed is a copy of Kennedy Center's agreement form for its Ticket Outlets. Please be sure to fill in the following:

PAGE 1: line 4, the name of the Ticket Outlet (your business name)

1-a The % is 5% (Five per-cent)*

Either 3-b OR 3-c, but not both are necessary. If you choose 3 b, the amount is \$500.00 (Five Hundred Dollars); If you choose 3 c, the amount is \$3,000.00 (Three Thousand Dollars)

PAGE 5: The top signature spot is for Kennedy Center.

If you have further questions, please call either:

Wayne Richardson, Sales Promotion (202) 254-3650

OR

Charles Bright, Sales (202) 634-7201

*Ticket vendor is not entitled to a commission if a service charge is made to the patron buying the ticket

INTL

Employee Activity Association, Inc.

Washington, DC 20005

A G R E E M E N T

This agreement made and entered into this _____ day of _____, 19____, by and between the John F. Kennedy Center for the Performing Arts (hereinafter referred to as "Center") and _____ (hereinafter referred to as "Ticket Vendor").

Whereas the Center shall be in a position to make available tickets to attractions as an agent for the producers and/or presentors of such attractions, and not as a principal, the Center agrees to utilize its best efforts to furnish for resale by Ticket Vendor available tickets to attractions performing and/or engaged to perform at the Center; whereas the attraction and/or the Center may from time to time be desirous of having tickets sold by and/or at the business location of Ticket Vendor; and that Ticket Vendor shall faithfully perform all of the terms, conditions and covenants of this agreement and does not default in any way.

W I T N E S S E T H :

In consideration of the mutual promises hereinafter set forth and the receipt of one dollar which is hereby acknowledged and the receipt from time to time for resale of tickets, vouchers and/or locations, by Ticket Vendor from the Center, and for a further consideration hereinafter named, the parties agree as follows:

1. Ticket Vendor agrees to use his or their best efforts in reselling such tickets, vouchers and/or locations as shall be made available to it, in accordance with the terms, covenants and conditions set forth herein, and in Annex A, appended hereto and incorporated by reference, and shall receive in full consideration therefor:

a. PERCENTAGE OF RECEIPTS. Ticket Vendor shall be entitled to retain as its commission _____ (%) percent of such gross weekly sales.

2. PAYMENTS. The Ticket Vendor will pay to the Center on Monday of each week for all business transacted through the close of business of the immediately preceding week, or at any other time upon demand, in cash or by certified check, a sum equal to the gross business [sales] for attractions of the Center, less the percentage of receipts set forth hereinabove.

3. GUARANTEE.

a. Notwithstanding anything to the contrary contained in this agreement, it is understood that the Center shall have a first prior lien in and to every and all receipts from whatever source taken in by the Ticket Vendor up to the amount(s) due the Center and the said monies shall be paid immediately upon receipt to the Center.

b. The Ticket Vendor has deposited with the Center the sum of _____ dollars (\$) to insure the faithful performance of all the terms, conditions and covenants of this agreement.

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c. The Ticket Vendor shall, prior to the execution of this agreement by the Center, indemnify Center against the non-payment of sales receipts due the Center, as set forth herein, for reasons and/or occurrences of every name or nature, by providing a financial guarantee in the amount of _____ dollars (\$ _____), payable and satisfactory to the Center, to insure the faithful performance of all of the terms, conditions and covenants of this agreement.

4. ADVERTISING.

a. The Ticket Vendor agrees that it will not display any advertisement in a public place or publication or in any medium whatever, advertising tickets for sale below box office price; that it will not advertise the attractions of or the John F. Kennedy Center for the Performing Arts, or the Eisenhower Theater, the Opera House, or the Concert Hall in newspapers or any other publications or media without the prior written consent of the Center. If such consent is given, Ticket Vendor will use only copy previously approved in writing by the Center.

b. Ticket Vendor shall indemnify, save and hold harmless the Center from any liability, damages or claims or expenses which in any manner arise from or relate to advertising and/or representations by Ticket Vendor, including attorneys fees, sustained or incurred by the Center, and resulting from: (1) The violation or infringement of any copyright, right of privacy or other statutory or common law right of any person, firm or corporation; (2) The violation of the Code of Good Practices of the National Association of Broadcasters; (3) The defamation of any firm, person or corporation.

Ticket Vendor further agrees to assume, at its own expense, the defense of any of the aforesaid losses, damages or claims or of any actions based thereon.

5. PROGRAM CONTENT. Ticket Vendor agrees that the Center cannot guarantee the exact content of the program to be performed, and that the said program is subject to such change as may be prescribed by the attraction. Ticket Vendor shall not make public representations to the contrary.

6. PERFORMANCE(S) NOT GIVEN. Notwithstanding anything to the contrary contained in this agreement, it is understood and agreed that if for any reason the sold performance is not given, or it is necessary to cancel the performance(s) without substituting an alternate performance satisfactory to the ticketholder, the Center shall refund to the ticketholder the full ticket price and shall accept from Ticket Vendor any monies already paid and/or due for payment of tickets and neither party shall thereafter be under further obligation to the other. Ticket Vendor shall not make refunds directly to ticketholders.

7. TERMINATION. This agreement may be terminated at any time by either party with or without cause, provided that any obligations arising hereunder shall remain outstanding, and providing that ten (10) days notice of such termination shall be given to the other party.

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8. INSURANCE.

a. Ticket Vendor shall fully insure itself, its officers, directors, employees, agents and operations at its own expense, as follows: Public Liability (Personal injury, \$100,000.00 per person and \$500,000.00 per occurrence), which policy shall name the Center as an insured. Certificates of insurance evidencing such coverage shall be furnished to the Center at least twenty-one (21) days prior to the execution of this agreement by the Center and Ticket Vendor shall furnish actual policies on demand. All policies shall be endorsed to provide 30 day notice of cancellation or material change to the Center. No tickets, vouchers and/or locations shall be provided Ticket Vendor until the required insurance coverage is in effect.

b. The obtaining of insurance or the furnishing of evidence of insurance by the Ticket Vendor as provided in this agreement shall not in any way relieve the Ticket Vendor from any of the obligations, liabilities, assumptions, responsibilities or other contractual duties referred to in this agreement, regardless of the coverages mentioned in such insurance or the terms of the policy or policies involved.

9. ASSIGNMENT.

a. Ticket Vendor shall not transfer, assign, hypothecate, allow transfer by operation of law, encumber or in any other way transfer this agreement or any right or interest therein.

b. If all or substantially all of the assets of Ticket Vendor are placed in the hands of a receiver or trustee or should Ticket Vendor make an assignment for the benefit of creditors or be adjudicated a bankrupt, or should Ticket Vendor institute any proceedings under any law relating to the subject of bankruptcy, liquidation or reorganization, or should any involuntary proceedings be filed against Ticket Vendor under any such laws, then this agreement shall not become an asset in any of such proceedings and, Ticket Vendor shall be in default under this agreement.

c. In the event the interest of the Ticket Vendor in this agreement shall for any other reason become vested by operation of law in any person other than the Ticket Vendor (including, without limitation, the vesting of any individual party's or assignee's interest in this agreement in another by reason of the death of such Ticket Vendor or assignee), the Ticket Vendor shall be in default under this agreement.

10. MISCELLANEOUS.

a. All vouchers and/or any other document(s) evidencing or affecting the right of admission to the theater(s) shall be ordered only by the Center and Ticket Vendor covenants that it will not order, distribute and/or issue same without the prior written consent of the Center except as set forth in Annex A appended hereto and incorporated by reference, which Annex A shall be subject to change or revision at the sole discretion of the Center without prior notice.

b. The Ticket Vendor agrees that it will not sell, dispose of or distribute the said tickets and/or locations to any cut-rate agency, ticket broker or other intermediary other than the ultimate user of said tickets, it being understood that any tickets and/or vouchers and/or locations so distributed in violation of

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this agreement shall be subject to confiscation by the Center without right or claim of offset by the Ticket Vendor.

c. If Ticket Vendor does sell or otherwise dispose of or distribute tickets, vouchers and/or locations to any cut-rate agency, ticket broker or other intermediary other than the ultimate user of such tickets and/or vouchers and/or locations, Ticket Vendor shall pay to the Center as liquidated damages three (3) times the printed value of all tickets sold and/or distributed by Ticket Vendor for performances at the center during the period thirty (30) days prior to such sale and/or disposition.

d. The Ticket Vendor will furnish all personnel required to be employed by Ticket Vendor.

e. Any provision of this agreement to the contrary notwithstanding, it is understood that this agreement shall not establish an agency or partnership relationship between the Center and the Ticket Vendor, that the Center makes no warranties express or implied with respect to tickets, and/or vouchers and/or locations which are delivered Ticket Vendor for sale to the public and that Ticket Vendor's obligations under this agreement to the Center are that of a debtor and not that of a trustee.

11. RESTRICTION OF BENEFITS. No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this agreement if made with a corporation or company for its general benefit.

12. NOTICE. Any notice which the parties may desire or may be required under this agreement shall be deemed sufficiently given if in writing and personally delivered or sent by registered or certified mail, return receipt requested, first class, postage prepaid, addressed to the addressee at the mailing addresses as specified for the parties in this agreement, or such other address as the parties may designate by written notice. The time of delivery of such notice shall be deemed to be the time when the same is so mailed or personally delivered.

13. HEADINGS. The headings throughout this agreement are for reference only.

14. INVALIDITY. If any provision of this agreement or its application to any person or in any circumstances shall be invalid or unenforceable, the other provisions of this agreement shall not be affected by such invalidity or unenforceability.

15. This agreement shall not be changed, modified, or varied except by a written instrument signed by both parties hereto.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officers as of the day and year first above written.

The John F. Kennedy Center
for the Performing Arts
2700 F Street, N.W.
Washington, D.C. 20566

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By: _____

Title: _____

(Jointly and Severally)

By: _____

Organized under the laws of

Title: _____

Name: _____